MCI Telecommunications Corporation

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July 11, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20006

Re: Ex Parte Presentation in:

CC Docket No. 92-237	CCBPol 96-14
CC Docket No. 95-116	CCB/CPD 97-1
CC Docket No. 96-98	CCB/CPD 97-4
CC Docket No. 96-128	CCB/CPD 97-12
CC Docket No. 97-90	CCB/CPD 97-30
CC Docket No. 97-100	CCB/CPD 97-19, RM 9085
CC Docket No. 97-107	
CC Docket No. 97-137	

Dear Mr. Caton:

Please file the enclosed letter as part of the record in the above-captioned proceedings. On July 10, 1997, a copy of the attached letter was forwarded to the Honorable Chairman Reed E. Hundt and other Commission staff.

Twenty-eight (28) copies are being filed with the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules for inclusion in the public record.

Sincerely,

Kecia Boney

Kecia Boney

Attachments

Cc: Commissioner Quello
Commissioner Ness
Commissioner Chong
Thomas Boasberg
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VIA HAND DELIVERY

July 10, 1997

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

In your recent speech to the Brookings Institution[1], you described two possible paths that new entrants might use in order to provide local telephone service.

Of the "thinkable" course, you said "[t]o implement a competitive entry strategy in today's transition period, a new entrant has to be an aggressive, albeit reasonable, advocate in all venues -- in the marketplace, in negotiations, in state regulatory proceedings, in front of the FCC and in court." And you said specifically that "new entrants need to be pushing for fair interconnection agreements...., fast, fair and efficient ordering and provisioning so they can aggressively sign up customers...[and they] need to be planning and making the requisite investments so they can provide the competitive access to the information network to all parties in the economy."

MCI has followed -- and continues to follow -- the course that you outlined. MCI has been the most aggressive competitor attacking the local market. We have clearly stated our intent to be a full-service local provider. We will compete in every market segment and every part of the country. And we're moving quickly to realize this goal. By the end of the year, MCI will have invested nearly $2 billion to provide facilities-based local service. As of today, we have turned up twenty-three U.S. markets and we will be a facilities-based provider in thirty-one markets by the end of the year. On the resale side, we have invested heavily to build the internal systems and infrastructure to serve the consumer market. We began offering local service to consumers six months after the Act was enacted. Today, we are offering service in four states and plan to expand to nine states by the end of the year. We expect to be offering resale products in 29 states by the end of 1998.

As competitive opportunities increase, so will our investment in local markets. MCI's

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[1]Chairman Reed E. Hundt, Federal Communications Commission, Brookings Institution, Washington, D.C., "Thinking About Why Some Communications Mergers are Unthinkable", June 19, 1997.

anticipated merger with British Telecommunications will mean that MCI will be well-positioned as an even stronger competitor for local market entry.

There is, quite simply, no other long-distance company that has come so far, worked so hard and invested so much in providing facilities-based local telephone service. Today, MCI **stands alone as the only company that has publicly announced a nationwide strategy to bring facilities-based competition to residential and business customers.**

But there is a very large problem. As we detail below, the local telephone incumbents retain monopoly power and they do not intend to give up their monopolies voluntarily. That is why we are encouraged by the pledge, in your Brookings speech, that the Federal Communications Commission (the "FCC" or "Commission") "will act rapidly and fairly in response to petitions of incumbents and new entrants."

That was an important, and much appreciated, promise. To realize the "competitive entry strategy in today's transition period," the Act put in place a regulatory structure and agenda that would permit the rapid opening of local markets through:

-- Quick access to local facilities needed to provide local telephone service through, among other means, operating support systems (OSS) that would allow new entrants to compete on an equal footing with incumbents,

-- Permanent, forward-looking prices that encourage the fast entry of, and investment by, new competitors into the local market.

-- Swift and certain enforcement of statutory and regulatory obligations that would prevent the incumbents from utilizing their current monopoly powers to thwart new competitors in the local market or the long-distance market.

As of today, none of these critical building blocks to local competition has been put fully into place. In this letter, therefore, we:

-- detail the tactics that incumbent monopolies are using to frustrate the key premises of the Act: forward-looking pricing, OSS, and enforcement of statutory and regulatory obligations,

-- set forth the critical actions that the FCC must now take in order to fulfill the critical premises of the Act, including:

-- immediate establishment of OSS performance standards and deadlines, with automatic penalties to follow any non-compliance,

-- abolition of unjustified and excessive one-time costs, known as non-recurring charges (NRCs), which block entry and, in particular, discourage facilities-based competition, and

-- establish new enforcement mechanisms that will permit a "quick look" to ensure that service disruptions are immediately ended.

-- address the actions that the FCC must undertake to eliminate threats to a competitive long-distance market, including:

-- immediately abolishing the interim payphone charges that the D.C. Circuit has found to be unjustified,

-- ensuring that incumbents cannot abuse billing and collection contracts in order to prevent the delivery of services to consumers and businesses, and

-- adoption of rules to ensure that incumbent practices do not lock in customers and impede competition through so-called PIC freezes.

INCUMBENT TACTICS TO MAINTAIN MONOPOLY MARKETS

The facts demonstrate that, while tactics vary by company and by state, there is a clear pattern of anti-competitive abuse by local phone monopolies to delay entry by MCI and others into local markets through inflated pricing, failure to implement effective OSS (even six months after the FCC's January 1, 1997 deadline) and varied tactics against which there has yet to be effective enforcement activity.

These tactics generally fall into the following three categories: (1) Delay ; (2) Disruption; and (3) Disparate Treatment of New Entrants. Examples of each are given below.

- Delaying Tactics

Regional Bell Operating Companies (RBOCs) consistently engage in inexcusable delays designed to hinder MCI's entry into local markets. By doing so, they attempt to accomplish two goals. First, they extend and strengthen their monopoly stronghold. Second, after imposing delay tactics, they contend that the lack of competition in any given market is a direct result of the competitors' lack of effort to enter the local market. That is not, of course, the case.

First and foremost, RBOCs have hindered MCI's ability to enter the local market by refusing to enter into signed interconnection agreements. MCI participated in 41 arbitrations in 29 states and the District of Columbia. While the Act requires that arbitrations be completed within nine months, because of the RBOCs' incentive to delay competition, MCI and other competitive local exchange carriers (CLECs) have been forced to negotiate and, in certain cases, renegotiate terms in order to reach a final agreement upon completion of these arbitrations. In addition to the specific actions detailed below, the Commission should send a firm signal to states that final interconnection agreements should be approved promptly.

Indeed, NYNEX recently reneged on an agreement to file an interconnection agreement with MCI in New York in April. In the end, MCI was forced to file a claim of bad faith with the New York Public Service Commission and does not anticipate obtaining an approved agreement with NYNEX until the end of this summer. NYNEX's anticipated merger partner, Bell Atlantic, has failed to enter into even one approved agreement with MCI in any of its states. Incredibly, USWest recently advised MCI that it had signed and filed an interconnection agreement in Oregon. MCI, after failing to receive its executed copy, found out from the state docket office that in fact no agreement had ever been filed. Once confronted, USWest finally admitted that it had never signed the agreement and had no intention of signing an interconnection agreement. As a result of these and similar delaying tactics by incumbent local exchange carriers (ILECs) throughout the country, MCI only has been able to execute 25 percent of the interconnection agreements that it has requested and has been able to actually implement even fewer.

Another example are the recent tactics employed by USWest, which resulted in MCI having to postpone local market entry in Colorado. As a result of USWest's continual delays in implementing an effective and efficient OSS system, MCI was forced to seek an extension of the July 31, 1997 date set by the Colorado Public Utilities Commission (Colorado PUC) for MCI to begin offering local residential service in Colorado. Prior to making that request, MCI began meeting several months ago with USWest representatives with an eye toward implementing an effective OSS system. Despite MCI's best efforts, those attempts were unsuccessful, and USWest insisted on implementing an OSS system that was inferior to that suggested by MCI. At MCI's invitation, several members of the Colorado PUC staff visited MCI's local service ordering facility to observe first-hand the inadequacies of USWest's OSS system. Because OSS is critical to MCI's ability to provide quality services, when faced with the choice between providing inadequate local service or no service at all, the only possible choice was to seek a postponement of the July 31, 1997 deadline.

Similar circumstances arise in Ameritech territory. The Department of Justice has recognized that unbundled access to common (shared) transport is critical to local competition.[2] Yet, with respect to issues of unbundled access to common transport, Ameritech has for months gamed the process, and now, the blame for delay in provision of unbundled access to common transport must be laid entirely at Ameritech's feet. Only after the record closed in the

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[2]"With respect to unbundled switching and shared transport, [Ameritech's] failure to make these checklist requirements practically available to its competitors forecloses an important entry vehicle involving the network platform." Evaluation of the United States Department of Justice, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan, CC Docket No. 97-137, p. 34.

AT&T/Ameritech arbitration did Ameritech for the first time assert that the Act does not require it to provide unbundled access to common transport. After its argument was rejected by the Michigan Public Service Commission, Ameritech still refused to provide common transport. Today, thumbing its nose at the Act, the Commission's implementing orders, and orders of several state regulatory commissions (i.e., Wisconsin, Michigan and Illinois), Ameritech continues to insist that it is not required to provide unbundled access to common transport.

Another problem is Ameritech's continued refusal, beginning on January 29, 1997, to test unbundled local switching on the basis that it was not tariffed and MCI did not have an approved interconnection agreement in Michigan. Indeed, today MCI still does not have an approved interconnection agreement in Michigan, and Ameritech continues to interpose frivolous "protests" to delay the approval of such an agreement. Ameritech has engaged in similar tactics in Illinois where, after approval of an interconnection agreement, MCI submitted its unbundled switching testing proposal on May 20, 1997. Ameritech responded that testing had to be conducted pursuant to the agreement's 120-day bona fide request process. Ameritech promises to complete development work--but not testing-- in late September 1997. Moreover, at two meetings in June 1997, Ameritech refused to commit to a price for unbundled local switching, claiming not to have the right personnel at either meeting.

Another example of inexcusable delay occurred when, as is discussed more fully below, MCI discovered that several of its customers in California were not able to receive incoming telephone calls because PacBell has not been activating MCI's NXXs in accordance with industry guidelines. After MCI filed a request for clarification of NXX activation requirements at the Commission, representatives of the Common Carrier Bureau requested a joint meeting with MCI and PacBell. Rather than send PacBell representatives with knowledge of the NXX activation problems to that meeting, PacBell sent two SBC employees that had no knowledge of the technical capability of the PacBell network or the genesis of the problem. This blatant disregard for the impact of its actions on customers, coupled with the continued resulting delay of resolution of the problem, is not only inexcusable, but also directly and adversely impacts the ability of CLECs to provide consumer choice and quality service.

- Disruption

Bell Atlantic has demonstrated an uncanny ability to disrupt attempts to successfully process MCI's local service orders. Recently, Bell Atlantic asserted a sham reason for rejection of an MCI circuit order. Specifically, Bell Atlantic rejected a circuit order request for a line reaching a Baltimore, Maryland, location, stating that MCI had included the wrong address on the order. MCI has used the exact same address for similar orders for years, and Bell Atlantic has never before rejected an order for lack of proper address. Upon further investigation, MCI discovered that there were (and always have been) two separate entrances to the <u>same</u> building located at the address on the order. MCI also discovered that, after two years working with Bell Atlantic to install equipment at this location, Bell Atlantic suddenly decided to reject the order because it had decided to use the other address for the location. Of course, Bell Atlantic did not provide that information when it rejected the order. Instead, MCI was forced to conduct its own investigation in order to discover that Bell Atlantic had decided to use the other address. This is the kind of disruption to the business process that wastes resources, time and energy. All Bell Atlantic had to do was to process the order, with an indication that going forward MCI would have to use the other address for the building. Instead, Bell Atlantic chose to reject MCI's order, and disrupt the process for no good reason.

Another master of disruption is SBC. After MCI battled for years to overcome a state law that stands as one of the most anti-competitive legal barriers to local competition in the Nation, the first phase of SBC's disruption to the regulatory process came to an end on June 4, 1997, when the Texas PUC granted MCI's request for permission to provide local service in Texas. Now that MCI is an authorized local service provider, SBC is focusing its efforts on phase two of its scheme: placing "retention" sales calls to customers that have expressed an interest in switching to MCI for local service, before those customers have actually enrolled in MCI service.[3]

This practice takes unfair advantage of SBC's role as "supplier" to MCI. In order for MCI to present a bid for a potential customer's local business, MCI must first know exactly what type of service the new customer receives from his current provider. Armed with that information, MCI can provide a competitive bid for the same services. In order to obtain the critical historical information, MCI typically must ask the customer to request from SBC a copy of the customer's local service summary report. MCI has learned that after requesting such reports, customers soon receive calls from SBC representatives who attempt to plant seeds of doubt in the customers' minds about MCI's ability to provide local services. Of course, it is only by virtue of SBC's monopoly position that it can use this information to target potential customers and try to convince them to remain with SBC before they have even had a chance to act upon a decision to switch to MCI. SBC is not alone. Earlier, MCI had learned that PacBell, upon its receipt of changeover orders for MCI local services, placed similar "retention" calls to customers in order to dissuade them from switching to MCI. Moreover, MCI has just this week verified reports that BellSouth has engaged in similar practices. This egregious practice is only made possible by the incumbents' access to customer information and monopoly position in the marketplace.[4]

NYNEX is another RBOC that has mastered the art of disruption. Between September 24, 1996, and January 17, 1997, MCI submitted 85 collocation applications in NYNEX's region.

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[3]Unlike calls made by competitors in order to "win back" business lost to a competitor after a change has taken place, "retention" calls are made by SBC prior to the time a sale has been consummated.

[4] MCI filed a complaint against PacBell at the Commission in early February in an effort to rectify this problem.

Despite assurances from NYNEX that collocating was part of normal business and should not require special attention, the entire project suffered from a series of delays interposed by NYNEX. As of May 5, 1997, only 32 applications had been handled in an acceptable manner. NYNEX rejected another 26 applications due to alleged space limitations.[5] Although NYNEX and MCI are now working toward a virtual collocation solution, NYNEX delayed the process for months, ensuring that little if no progress was made between MCI's original collocation request almost a year ago, and NYNEX's eventual later agreement to work toward resolution of the problems using a virtual collocation alternative.

USWest has also demonstrated that it will take positions designed to disrupt a smooth transition to a competitive local market place in its region. For several years, USWest has consistently engaged in tactics designed to delay MCI's entry into local markets within its region. MCI's problems in the State of Oregon, for example, began over a year ago in March 1996 when just three months after the Oregon PUC ordered local interconnection, MCI was forced to file suit to enforce the order. MCI had to return to the Oregon PUC on two additional occasions before USWest finally agreed to discuss interconnection with MCI. It was not until September 1996 that MCI finally turned up the first local customer in Oregon after entering into an interim interconnection agreement with USWest.

Although those specific incidents occurred several months ago, they are illustrative of the pattern and practice of abuse of the process in which USWest regularly participates. After disrupting the regulatory process, USWest typically transitions quickly to disrupting the actual process of interconnection. For example, after several months of attempting to resolve significant interconnection problems, MCI was forced to bring suit against USWest in late June at the Washington Utilities and Transportation Commission due to USWest's continued refusal to provide interconnection facilities in a timely manner in the Seattle and Tacoma markets. USWest has, for example, advised MCI that due to constrained port capacity, USWest will be unable to provision trunks between MCI's Seattle switch and USWest's Tacoma tandem, and further, that USWest does not intend to address the lack of capacity until at least October 31, 1997. USWest suggested that MCI order direct end office trunking to alleviate this problem. Of course, this alternative involves additional cost to MCI, as those trunks must be purchased from USWest. In the meantime, MCI is forced to discontinue marketing its services in Tacoma, and is preparing to order twenty-four trunks to each of several different end offices in the Tacoma area. MCI has recently learned from USWest that this solution may be temporary because US West is also experiencing port constraints in many of its end offices in Tacoma. These disruptions to the interconnection process and MCI's business plans, simply because USWest has not taken steps toward preparing its network for competition, are simply unacceptable.

USWest has also rejected several orders to change MCI branch offices to MCI's local service, which it is purchasing for resale from USWest. USWest has asserted as support for

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[5]NYNEX has not complied with the Act's requirements that it certify the space limitation finding with the New York Public Service Commission.

rejection of those orders its unsubstantiated belief that the law does now allow new entrants to resell services to its affiliates.

- Disparity

A third category of obstruction arises when incumbent local exchange carriers (ILECs) treat themselves better than they treat MCI and other new entrants. This is an area of great importance, especially at a time when some incumbents will have entered the long-distance market and others express eagerness to do so. The ability to discriminate is obvious. In a typical circumstance, MCI requires cooperation from the local incumbent in order to initiate service to local customers and to provide service to long-distance customers. This provides ample opportunity for the incumbent to prefer itself or its affiliates of its competitors. For example, when a new customer signed up for MCI service at her new address, PacBell took over three weeks to disconnect the previous occupant's local service, and provide dial tone for the new MCI customer. During this period, the MCI customer had only soft dial tone, which allowed her only to place 411, 911 and calls using a calling card. Upon complaining to PacBell, the MCI customer was told by a PacBell representative that had she selected PacBell for her local service provider, the problems could have been corrected within ten (10) days.

Another example of disparate treatment is the procedure SNET requires MCI to follow to obtain customer service records (CSRs). SNET requires that MCI complete requests for CSRs via fax machine, a process which takes up to ten (10) days to complete. SNET employees, on the other hand, can access CSRs for SNET's retail customers on-line. Additionally, in May, due to an unannounced relocation of the fax machine, MCI was unable to process CSR requests for nearly an entire business day. During that time, SNET was not adversely affected because its employees continued to access CSR information on-line during the fax machine outage.

Similarly, and similarly disturbing issues arise when ILECs can provide themselves with more favorable treatment in matters relating to billing, the process for changeovers for long-distance providers, and, of course, prices levied on new entrants for services that incumbents provide to themselves. In each area, as we explain below, the Commission must take action.

OPENING LOCAL MONOPOLY MARKETS

With the completion of the initial regulatory "trilogy", the Commission must now move forward to turn the rules of competition into competitive realities. This requires action on a number of fronts--the most pressing include:

1. OPERATIONS SUPPORT SYSTEMS (CC Docket No. 96-98)

MCI supports the CompTel/LCI petition for OSS parity. The FCC should promptly publish a Notice of Proposed Rulemaking with a final order by November 1997, establishing specific requirements for performance standards, measures, reporting and penalties in connection with the provision of OSS. Performance standards, reporting, and enforcement are necessary to ensure that access and interconnection are provided at parity and on reasonable terms. ILEC provision of OSS affects timely provision of service to subscribers, the quality of such service, and the goodwill of new entrants.

In addition, pursuant to section 256 of the Act, the Commission should take immediate action to notify the Ordering and Billing Forum (OBF) that it should take any and all actions necessary to expedite resolution of industry standards. The Commission should state that, while it encourages resolution of technical standards-setting by the industry in voluntary fora such as OBF, resolution of the OSS issues is critical to ensuring that new entrants and incumbents can develop national standards. For that reason, the Commission should announce that it will monitor OBF progress on this issue, and send a representative to meetings as necessary to ensure that national standards are reached as soon as possible.

Finally, the Commission should recognize that incumbent monopolies will have little or no incentive to follow through on the performance of OSS systems unless there is a specific, quick and simple remedy for any performance failure. In order to ensure that ILECs strictly adhere to the performance standards that are ultimately adopted, the Commission should establish regulations that award new entrants automatic performance credits for any delay or failure to timely provision an OSS function or unbundled element. We believe that the provisions dealing with performance credits in MCI's interconnection agreement with USWest in Minnesota should be viewed as a model for the imposition of performance credit requirements when a party fails to provide timely provisioning of services. Standard damage remedies are insufficient as both a deterrent to incumbents and as a means of compensating competing providers. Given the integral role of OSS in enabling new entrants to provide timely and reliable service, stringent enforcement mechanisms are necessary to prevent the incumbents from delaying competition.

2. FINAL, COST-BASED PRICING

Non-recurring charges that are not based on forward-looking costs or that should be appropriately levied only as recurring charges form a substantial -- and substantially unappreciated -- barrier to local entry. In its Interconnection Order, the Commission recognized the importance of making rates for all unbundled elements based on cost. NRCs are an integral part of unbundled elements because they represent the charges associated with ordering and provisioning of these elements. Therefore, when a CLEC wishes to purchase elements or resell ILEC services, the cost must not simply be calculated as the cost of the element, it must be calculated to include the NRC as well. For these reasons, MCI contends that NRCs must not be viewed as a separate but expendable charge, instead they should be calculated as an additional cost of purchasing an element. Thus, when ILECs are permitted by states to assess excessive NRCs, in effect, it creates a barrier to local market entry.

The Commission should require states to compel ILECs to price NRCs, to the extent that such charges are independently justified, based on cost. To date, NRCs have not been deemed cost-based, are prohibitively expensive and ultimately constitute a barrier to entry. For example, in California, the cost for interconnection of a loop is approximately $187.00 while in New Jersey, the rate for the same work is only approximately $27.00. Although different incumbents may have somewhat different cost structures, disparity this wide in nonrecurring charges is prima facie evidence that rates are not cost-based.

The adverse impact of unjustified NRCs is particularly great on facilities-based competition. We have seen that NRCs are higher on facilities-based entry than on resale, which leads to the obvious conclusion that the RBOCs would prefer to drive local competitors towards resale (where the discounts are lower and inflated access charges remain in place) and away from facilities-based competition, which is precisely the sort of competition that Congress and the FCC wish to encourage. It is facilities-based competition, of course, that permits MCI to best bring innovation and new products to the local market for the first time.

In addition, one of the biggest impediments to the development of local competition is the uncertainty of interim rates for unbundled elements and resale while state commissions complete permanent cost proceedings. The Commission must act now to clarify that, for the purposes of evaluating RBOC entry applications under section 271 of the Act, the evaluation of whether the checklist has been met is a federal determination that requires unbundled elements to be priced at total element long run incremental cost and resale to be priced using the Commission's preferred resale methodology, as the Commission told the Supreme Court in its motion to vacate the Eighth Circuit stay. This requirement is independent of any rulemaking authority under Section 251(d).

3. DIALING PARITY -- DOCKET 96-98

The FCC must quickly release a reconsideration order on dialing parity for directory assistance services to make clear that ILECs must provide new entrants with magnetic tape directory listings and third party data so that new entrants can populate their own directory assistance databases without having to rely on RBOC networks. Without such an order, new entrants will be entering local markets without the ability to provide competitive 411 services, which are valuable to consumers and critical to the success of competition.

Moreover, in this docket, the Commission has ordered that intraLATA toll dialing parity be implemented based on LATA boundaries. The Commission should thus clarify that RBOCs located in states that have ordered intraLATA toll dialing parity must provide intraLATA toll dialing parity for those portions of the LATA that cross that state's boundary.

4. SINGLE-LATA STATES

The FCC should intervene on the state commission's side in a Delaware case in which the definition of "single-LATA state" in section 271(e)(2)(B) of the Act is at issue. The Commission should explain that single-LATA states are those that are served by a single LATA, whether or not the LATA is coextensive with the state's borders. Any other interpretation would deny the benefits of intraLATA toll competition to consumers in single-LATA states. Absent a Commission statement, consumers in some states (like Delaware) will have only one choice for intraLATA toll on a 1+ basis until the RBOC is granted in-region authority, or until 1999.

5. COST RECOVERY FOR PERMANENT LOCAL NUMBER PORTABILITY (CC DOCKET 95-116)

The Act requires that the costs associated with permanent local number portability (LNP) be bourne by all carriers on a competitively neutral basis. Cost recovery looms as a potentially enormous financial burden for new entrants, particularly if we were asked to finance our own local number portability development, and compensate the incumbents for their development at the same time. The FCC should rule that pooling and mandatory end user surcharges are not in the public interest and are not acceptable cost recovery methods. The FCC should rule that LNP costs should be bourne by the incumbents because placing costs on new entrants loads additional costs onto interexchange carriers (IXCs), which benefit only indirectly from LNP, and are already spending significant sums to become LNP-capable. The FCC should also require the incumbents to quantify the figures used to support their arguments that LNP costs are extremely high, thus exposing those that are clearly padding their estimates in an attempt to recover non-LNP related costs.

6. NXX LOADING ISSUES

MCI discovered that several of its customers were not receiving telephone calls placed to them in California because PacBell's systems do not recognize MCI local customers' phone numbers. Unable to route the calls to MCI's customers, PacBell undertook a manual process several weeks ago to complete the input process. Thus far, the process has been arduously slow – one telephone number at a time. Pacific Bell claims to be working on a system that will allow it to validate that telephone numbers are loaded into its system, but that system apparently will not be operational until September. In the meantime, MCI local customers run the risk of not receiving their telephone calls. MCI has encountered these difficulties in many parts of the country, but they have been particularly acute and remain unresolved in the PacBell region.[6]

The Commission should therefore promptly direct incumbent LECs to activate NXX codes in accordance with the schedule described in the Industry Numbering Committee's Central Office Code Assignment Guidelines or, at a minimum, to activate the NXX codes assigned to other entities no less promptly than they activate NXX codes assigned to themselves. The

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[6] On May 28, MCI filed a request at the FCC for clarification of local telephone companies' obligations for NXX code activation and verification for updating their systems with MCI's and other CLECs' customers' telephone numbers.

Commission should also confirm the requirement that incumbent LECs must provide auditable verification of the activation of other entities' assigned NXX codes. NXX code activation is competitively significant for several reasons, including the fact that it is impossible to reach the another carrier's customers using regular dialing from a switch in which that entity's NXX codes have not been activated. It is very difficult to sell local service to a customer who, upon switching providers, will be unable to receive telephone calls.

7. SHARED/COMMON TRANSPORT (CC Docket No. 96-98)

On reconsideration, the Commission should clarify that ILECs are required to unbundle common (shared) transport and provide it at TELRIC-based, per-minute rates. The Commission should confirm that ILECs are required to unbundle local transport, including access to shared transmission facilities between ILEC end offices and tandem switches, and to dedicated facilities between ILEC central offices and those of competing carriers. This would be more efficient than having new entrants either duplicate the ILEC's network by constructing their own interoffice facilities, which would delay entry and significantly increase new entrants' costs, or by purchasing costly dedicated transport.

8. EXPEDITIOUS COMPLETION OF ALL PENDING ENFORCEMENT ACTIONS

Enforcement presents one of the most critical means by which the Commission can ensure the development of a competitive local market place. MCI and other CLECs have encountered ILEC actions that have served to impede their ability to compete effectively as a local and long distance provider. MCI believes that ILECs have relied on the fact that historically, regulatory agencies have taken significant time to render decisions. While our recent enforcement efforts at the Commission are subject to expedited briefing schedules, the Commission must not lose sight of the need for expedited decision-making.

The Commission has the opportunity through its pending formal complaint rulemaking proceeding to dramatically reform its enforcement procedures in order to make them more efficient and ultimately, more effective. New entrants need enforcement processes that replicate the incentives of the emerging competitive marketplace. Indeed, the Commission must be willing to try to new and creative ideas and techniques to discourage incumbent anti-competitive actions. For example, the Commission should adopt a "quick look" process that seeks to discern whether service is working. A party would have the ability to pursue actions to assess liability and sanctions/fines/penalties immediately after the problem is fixed. This would ensure that no permanent advantage accrues to any competitor from a lack of regulatory initiative, that the action is timely and that the Commission is able to replace the incentives that competition would provide. Without this type of swift and decisive action, the ILECs will only be encouraged to continue to undertake unlawful and anti-competitive actions in order to protect their current monopoly environments to the detriment of consumers.

9. PENDING PETITIONS FOR DECLARATORY RULING AND/OR PREEMPTION

While ILEC actions have been used to create barriers to entry for new entrants, there are many instances where state and/or local actions have impeded a new entrant's ability to enter the local market as well. Therefore, the Commission must resolve each pending petition for declaratory ruling or preemption of conflicting state or local action. Resolution of preemption petitions filed by new entrants would quickly remove barriers to entry erected by state and local governments that clearly contravene federal telecommunications policies. These petitions include, but are not limited to:

- Petition seeking declaratory ruling and/or preemption of the Texas Public Utility Regulatory Act of 1995 which among other things, requires new entrants to construct new network facilities as a condition of certification to provide local services. (CCBPol 96-14)

- Petition seeking preemption of certain provisions of the Arkansas Telecommunications Regulatory Reform Act of 1997 as violating section 253 of the Act and requesting that the Commission assert jurisdiction over state arbitrations pursuant to section 252(e)(5) of the Act. (CC Docket No. 97-100)

- Petition seeking declaratory ruling that Troy, Michigan's use of its permitting processes, its control over cable franchising and its local telecommunications ordinance are preempted and are in violation of sections 541, 544(e) and 253 of the Act. (CSR-4790)

- Petition seeking declaratory ruling that any requirement imposed by an ILEC or state or local government that a new entrant obtain separate right-to-use and license agreements before a new entrant may purchase access to unbundled elements violates sections 251 and 253 of the Act, and that the Act's nondiscrimination requirement requires an ILEC to provide the requesting carrier with the same rights to intellectual property that the ILEC enjoys. (Docket No. CCBPol 97-4; CC Docket No. 96-98)

- Petition for declaratory ruling that where there are significant geographic differences in the cost of providing interconnection or unbundled elements, rates for interconnection and unbundled elements that are not geographically deaveraged constitute a barrier to entry and the failure to geographically deaverage is a violation of section 252 of the Act. (Docket No. CCB/CPD 97-1)

- Petition seeking declaratory ruling and contingent preemption of the initial costs incurred by ILECs to meet the statutory requirements of the Act (such as US West's Interconnection Cost Adjustment Mechanism surcharges) are not recoverable through state imposed surcharges on either the CLEC or the end user. (CC Docket No. 97-90; CCB/CPD 97-12)

- Request for clarification of the Commission's rules regarding reciprocal compensation for information service providers. (CCB/CPD 97-30)

- Petition requesting that the Commission affirm its decision that the recombination of unbundled elements to provide a service already being provided by the ILEC does not constitute a resold service.

In addition, the Commission should establish procedures that allow it to proceed even more quickly on future petitions. For example, MCI may soon file a petition asking the Commission to conclude that a state has failed to fulfill its obligation to conclude arbitrations. If that petition is filed, MCI will request that the Commission act even more quickly than the Act requires.

ELIMINATING THREATS TO A COMPETITIVE LONG-DISTANCE MARKET

Although our determination and commitment to provide consumers with choice, lower prices and better quality local telephone service remain strong, our efforts to do so have been frustrated by ILEC strategic and anti-competitive behavior. Moreover, MCI has become keenly aware that its relationship with the RBOCs as a long distance provider has begun to deteriorate as well. We are convinced that the increased anti-competitive actions can be directly attributed to the RBOCs' interest in obtaining in-region long distance authority. Thus, it is imperative that the Commission recognize the need for resolution of more than local service issues. In the end, if MCI's long distance business becomes compromised financially because of regulatory inaction with respect to RBOC actions, the monies necessary for additional investment in the provision of local service will also be jeopardized.

1. PAYPHONE REMAND (CC Docket No. 96-128)

The Commission must act immediately to eliminate the current interim compensation mechanism and revise its compensation scheme immediately to base compensation for 800 and access code calls on the cost of providing service. Compensation based on cost would fairly compensate payphone providers and, thus, enable them to maintain and expand service, while allowing carriers to keep operator service and 800 rates affordable to consumers.

If an immediate decision on cost-based compensation is not forthcoming, the Commission should at minimum act to discontinue payments under the unlawful interim compensation scheme that was overturned last week, and to initiate a two-way true up mechanism that protects all parties once a compensation decision is reached.

2. BILLING AND COLLECTION

Currently, most customers receive one bill that contains their local and long distance charges. Incumbents, however, have altered or are threatening to alter their business relationships with long distance providers by eliminating billing and collection services or increasing prices by an unjustifiable amount. The Commission needs to take two actions. First, with respect to casual billing, the Commission must implement rules requiring all LECs to provide billing and collection for non-subscribed services on a non-discriminatory basis, pursuant to an MCI rulemaking request currently pending before the Commission. Unless this occurs, MCI will be unable to bill effectively and economically for these services, which provide **consumers with services they value and use. Non-subscribed services accounted for $11.6 billion in revenue industry-wide in 1996; 10XXX for non-big three in 1996 accounted for $1.5** billion. Unless the Commission acts, there will be a reduction in competition and consumer benefits provided through non-subscribed services. Many non-subscribed service providers would be driven out of business and/or have to discontinue certain services due to increased bad debt.

Second, the Commission should examine carefully ILEC provision of billing and collection to unaffiliated and affiliated long distance carriers to ensure that billing and collection is provided on a reasonable and nondiscriminatory basis. It should also examine, whether in light of local competition, billing and collection requirements should be imposed on all ILECs. In addition, the Commission must examine the lack of alternative suppliers of billing and collection, and whether ILEC provision of billing name and address data at prevailing interstate access rates is cost-based, providing an adequate opportunity for long distance providers to provide their own billing and collection services as an alternative to ILEC billing.

3. CARRIER IDENTIFICATION CODES (CICs) (CC DOCKET 92-237)

In April, the Commission ordered that all 3-digit CICs be retired on January 1, 1998, in order to accommodate the industry's growing need for CICs and to accommodate a perceived shortage of CICs. But this January 1, 1998, flash cut from 3- to 4-digit CICs is an expensive solution in search of a problem. Bellcore data shows that there is no shortage of CICs that justifies this early transition date. Unless the Commission extends the transition date, long distance consumers seeking to dial around (such as when a presubscribed carrier suffers a network outage) are going to face a new dialing disparity that will undoubtedly cause confusion and customer complaints, even if companies such as MCI are forced to spend millions to educate consumers about the new dialing patterns. Dialing confusion also adversely affects competition for intraLATA toll services. Since RBOCs are generally not required to provide presubscription until they receive section 271 authorization, MCI is at a severe competitive disadvantage if the January 1, 1998, deadline remains, since most confused consumers will find it more convenient to place toll calls by simply dialing 1+. As supported by pending petitions from several CIC holders, the Commission should not retire 3-digit CICs on January 1, 1998, and should extend the permissive dialing period for 3- and 4-digit CICs through at least the year 2000.

4. REQUIRE LECs TO DELIVER FULL REDUCTION ON ACCESS CHARGES (CC Docket No. 97-107)

The Commission should conclude its investigation of the price cap ILECs' 1997 annual access tariffs by the end of July 1997. The Common Carrier Bureau has already found that the ILECs' tariffs raise substantial questions of lawfulness. By concluding the investigation and requiring the ILECs to comply with the price cap rules, the Commission would close the $200 million gap between the access charge reductions filed by the ILECs and the Commission's $1.7 billion announced reduction.

5. ADMINISTRATION OF THE NORTH AMERICAN NUMBERING PLAN (NANP) (CC DOCKET 92-237)

The Commission should quickly select Lockheed Martin as the new NANP administrator, based on North American Numbering Council's recommendation that it do so. If Mitretek, the second place bidder, is selected, it would cost the industry an additional $22.5 million to support NANP administration by Mitretek, as compared to Lockheed Martin. Additionally, transition from the present system, devised under a monopoly model, to a neutral numbering administration system, needs to be concluded as expeditiously as possible. Until then, new entrants are required to secure essential numbering needs by relying on the RBOCs and ILECs, our direct competitors.

6. PIC FREEZE PETITION (CCB/CPD 97-19, RM 9085)

The Commission must implement a rulemaking proceeding now and adopt the rules proposed by MCI to ensure that carrier practices in soliciting, implementing and removing PIC freezes do not impede competition. ILECs are using PIC freezes to lock in their own customers and to impede effective competition, particularly in the local and intraLATA toll markets. MCI's proposed rules would ensure that PIC freezes are not used to frustrate intraLATA toll and local competition before it has a chance to develop.

CONCLUSION

We understand that MCI has put forth a daunting agenda of Commission action. And, of course, this letter has not detailed the many, equally important, actions that must be taken by state regulators, antitrust officials and the courts. But this agenda is no more daunting than the competitive strategy that MCI has undertaken. We are going into battle against an entrenched, well-heeled, and sophisticated opponent. We do not ask that those competitors be disarmed. We merely ask, on behalf of consumers and businesses, that our opponents not be permitted to protect themselves from battle by wielding the unfair shield of monopoly.

As this letter demonstrates, monopoly power cannot be eliminated with a single stroke (of the metaphorical sword or the legislative pen). That is why the Federal Communications Commission was given the power to turn the language of the Telecommunications Act into true competitive opportunity. To fulfill this task necessitates that a great number of tasks be accomplished, with scarce resources and in a short time. This is an aggressive, but eminently reasonable, approach. Without the execution of this pro-competition agenda the purpose of the Telecommunications Act will remain unfulfilled.

Sincerely,

Jonathan Sallet
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